

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON LOCAL GOVERNMENT

Call to Order: By **CHAIRMAN MARK NOENNIG**, on March 6, 2003 at 3:10 P.M., in Room 472 Capitol.

ROLL CALL

Members Present:

Rep. Mark Noennig, Chairman (R)
Rep. Eileen J. Carney, Vice Chairman (D)
Rep. Scott Mendenhall, Vice Chairman (R)
Rep. Arlene Becker (D)
Rep. Rod Bitney (R)
Rep. Larry Cyr (D)
Rep. Gary Forrester (D)
Rep. Ray Hawk (R)
Rep. Hal Jacobson (D)
Rep. Jesse Laslovich (D)
Rep. Bob Lawson (R)
Rep. Penny Morgan (R)
Rep. Alan Olson (R)
Rep. Holly Raser (D)

Members Excused: Ronald Devlin (R)

Members Absent: Rep. Rick Maedje (R)

Staff Present: Connie Erickson, Legislative Branch
Linda Keim, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

The time stamp for these minutes appears at the beginning of the content it refers to.

Committee Business Summary:

Hearing & Date Posted:	SB 33, SB 45, SB 47, 2/28/2003
Executive Action:	SB 33: BE CONCURRED IN, 16-0
	SB 45: BE CONCURRED IN, 16-0
	SB 47: BE CONCURRED IN, 15-1

The meeting was opened by **VICE CHAIRMAN CARNEY**.

HEARING ON SB 33

{Tape: 1; Side: A; Approx. Time Counter: 0 - 5}

Sponsor: SEN. JOHN COBB, SD 25, AUGUSTA

Opening Statement by Sponsor:

SEN. COBB stated that SB 33 clarifies that only permissible fireworks may be sold during authorized time periods. The bill simply is a cleanup of the language and adds the word "permissive." The law previously was not restrictive enough and some people took it to mean that fireworks of any kind could be sold. Copies of Section 50-37-105 of the 1999 Montana Code, and Sections 50-37-105 and 50-37-106 of the 2001 Montana Code were submitted for the record.

EXHIBIT (loh47a01)

EXHIBIT (loh47a02)

Proponents' Testimony:

Ali Bovington, Assistant Attorney General, Department of Justice, spoke as a Proponent. She said that the housekeeping amendments to this section from last session created a situation where there was a question as to what type of fireworks could be sold in the state during the authorized time frame. SB 33 clarifies that it is only permissible fireworks that may be sold during authorized times. She stated that the Department of Justice supports the bill and asked for a do pass.

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor:

SEN. COBB asked that SB 33 BE CONCURRED IN. He asked **REP. FORRESTER** to carry the bill on the House floor.

HEARING ON SB 45

{Tape: 1; Side: A; Approx. Time Counter: 5 - 17}

Sponsor: SEN. KELLY GEBHARDT, SD 4, ROUNDUP

Opening Statement by Sponsor:

SEN. GEBHARDT said that SB 45 increases the limit from \$10,000 to \$20,000 on the need to do supplemental advertising and Request For Proposal (RFP) process with contracts for architectural, engineering, and land surveying services that may be directly negotiated by a governmental agency. The bill is an adjustment for inflation.

Proponents' Testimony:

Gordon Morris, Director Montana Association of Counties (MACo), said that this bill addresses inflationary concerns that occurred since the \$10,000 limit was enacted.

Eric Griffin, Director Public Works for Lewis and Clark County and President Montana Association of County Road Supervisors, said that SB 45 will allow governmental agencies to be more efficient with their time and money. Under the current \$10,000 limit established in 1993, governmental agencies must write RFPs, evaluate responses, and interview consultants of smaller projects. By increasing the limit to \$20,000, smaller projects will be less expensive and allow governmental agencies additional time to address other issues.

Jay Skoog, Executive Director, American Council of Engineering Companies of Montana, said that the bill will save money, eliminate the RFP process, and allow agencies to be more efficient.

Opponents' Testimony: None

Informational Testimony:

Tom O'Connell, State Architect, stated that his office uses this statute and that he was available for questions from the Committee.

Questions from Committee Members and Responses:

REP. JACOBSON asked what the cut-off points are on projects with state architects. **Tom O'Connell** replied that for projects over \$250,000 they do a statewide mailing to all existing architectural and land surveyor firms. Projects under \$250,000 use a database which interested architects and engineers have applied to. He said that his office makes selective mailings to the Administration Director to make the initial appointment. His office still goes through the Director to get an appointment on projects with a fee that would be under \$10,000.

REP. MORGAN said that testimony indicated the limit was last adjusted in 1993 to \$10,000. She asked why the limit jumped to \$20,000 in this bill, and noted that the inflationary rate has not gone up 100% since 1993. **Gordon Morris** replied that HB 310 in 1987 set the amount at \$5,000 and that the amount was increased to \$10,000 in 1993. He commented that this is not necessarily tied to inflationary considerations over that ten-year period. The \$20,000 was identified as an amount that would make projects more cost-effective from the standpoint of the local government that is planning small projects.

REP. FORRESTER asked if the amount is a cumulative \$20,000 total for architectural, engineering, and land surveying, or if it would be \$20,000 for each type of service performed. **Gordon Morris** answered that Page 2, Lines 21-22 state that the department may not separate service contracts. He said that same language is there for local government, and stated that they could not be rolled up into a ball.

REP. FORRESTER restated his question and asked, "Could the limit be \$20,000 for architectural, \$20,000 for engineering, and \$20,000 for surveying on the same project?" **Gordon Morris** deferred to **SEN. GEBHARDT** who answered that the language on Lines 21-22 clearly states that projects cannot be split. The land survey for a new building could not be separated from the building. It would have to be a cumulative amount of the \$20,000.

REP. FORRESTER asked, "If all the services are rolled into one and the project is at the \$20,000 threshold, what would a project like this cost if architectural and other services all run about 15-17% of the total cost? What kind of cost of the total project would you be talking about if these can be done without an RFP?"

SEN. GEBHARDT said that this bill is addressing things like the need for an American's with Disabilities Act (ADA) upgrade on a building where an architectural engineering service would come in and do some drawings and some basic structural engineering service. He said that it often exceeds \$10,000.

REP. FORRESTER said that if the total project cost could be over \$1 million it has to be bid and would have to contract with an architectural engineering firm. He asked, "Is that the only part of the contract that could be done without an RFP or without putting the project out for public bid?" **SEN. GEBHARDT** said, "Yes, with a \$1 million project there could be \$150,000 in engineering costs. Someone may do basic drawings just for advertising purposes, but there would be an immediate bid for engineering services." **SEN. GEBHARDT** said that this might also cover a city or town planning curb work, or a town changing the radius of a corner on a county road. They would be able to hire

someone to do the work without spending \$4-5,000 on an RFP and going through the whole process.

Closing by Sponsor:

SEN. GEBHARDT thanked the Committee and asked for a do pass. It was determined that **REP. FORRESTER** will carry the bill.

VICE CHAIRMAN CARNEY passed the gavel to **CHAIRMAN NOENNIG** and he took over the Committee Hearing at this point.

HEARING ON SB 47

{Tape: 1; Side: A; Approx. Time Counter: 18 - 30}

Sponsor: **SEN. KELLY GEBHARDT, SD 4, ROUNDUP**

Opening Statement by Sponsor:

SEN. GEBHARDT said that SB 47 increases the bid threshold from \$4,000 to \$25,000 for local government construction contracts paid for with fuel tax revenue. The best proof of need for this bill is that it costs \$3-5,000 to go through the advertising and RFP process. He said that if the purchase is for \$4,000 worth of culverts, it is a shame to spend \$4,000 more to go through the process to get there and emphasized the importance of being conservative with tax dollars.

Proponents' Testimony:

Alec Hansen, League of Cities and Towns, spoke in support. He said that this section of law was enacted in 1955. Section 5 has not been amended since that time and has a \$4,000 bid limit on gas tax expenditures. He said that the inflation index at that time was 26.8, and today it is 184. The inflationary adjustment would actually be \$27,400 and not \$25,000 and should have been done a long time ago. He asked for a do pass.

Eric Griffin, Director of Public Works for Lewis and Clark County and President of the Montana Association County Road Supervisors, asked for support of SB 47.

J. D. Lynch, representing Butte-Silver Bow, said that the \$25,000 threshold would be more efficient for our government.

Gordon Morris, Director Montana Association of Counties (MACo), said that this is a MACo resolution that dates back to 2000. He said that MACo feels the \$25,000 amount is appropriate.

Jani McCall, City of Billings, said that the City of Billings supports SB 47 for all the previously stated reasons.

Don Judge, Teamsters Local 190, said that the Teamsters also support SB 47 so that government will not have to spend so much to go through the bidding process.

Opponents' Testimony:

Cary Hegreberg, Montana Contractor's Association, stated that he represents construction firms around the state, and said that fuel taxes are paid by anyone who buys fuel or gasoline. He noted that the statute exists to guarantee that fuel taxes are expended in the most cost-effective manner and that raising the threshold to competitive bidding by over 600% is not acceptable. He said that the Contractor's Association understands the need for flexibility in local government to make procurement decisions without having to go to bid.

Mr. Hegreberg suggested that an amendment doubling the amount to \$8,000 is both workable and reasonable. Contractors fear that raising the amount to \$25,000 will lead to reduced access to certain markets. He emphasized that small construction companies should have the right to competitively bid with local governments that may occasionally get comfortable with certain suppliers and not seek competitive bids.

Carl Schweitzer, American Subcontractors of Montana, said that there are about 600 subcontractors in the state. He said that they oppose the bill because of the amount it has been raised to. American Subcontractors feel that \$8,000 is a more reasonable number. He emphasized that small contractors pay taxes and are local "economic engines" that work in the community in which they live. He stated that there may be several small contractors that would welcome the opportunity to bid on a small job.

Informational Testimony: None

Questions from Committee Members and Responses:

{Tape: 1; Side: B; Approx. Time Counter: 0 - 7.0}

REP. MENDENHALL asked about the bidding process and the typical cost. **SEN. GEBHARDT** said that to go to bid would require a minimum of three bidders with each having to pay more than \$1,000 to work up a RFP. The county has advertising costs of about \$1,000 and interview costs of \$500-\$1,000. He said that only one person will get the contract, and all bidders have to allow more money in their bid to pay for the RFP work. He commented that

culverts can be purchased for road repair, but equipment cannot be bought with gas tax funds.

REP. MENDENHALL asked if it would be considered a friendly amendment if the amount were doubled to \$8,000. **SEN. GEBHARDT** said that he would leave the amount up to the Committee. He said that the \$25,000 figure is appropriate, but if the Committee wants to change it that is okay.

CHAIRMAN NOENNIG asked for a response to Alec Hansen's analysis of inflation adjustment. He wanted to know if one could compare the kinds of projects that were done in the 1950s with those that are done now. **SEN. GEBHARDT** said that he had not addressed the issue when he was researching the statute in the historical archives. He said that Montana companies would like the opportunity to bid on smaller construction projects that are offered by local governments. He suggested putting some indexing in all the statutes so they don't have to be reviewed every few years. Public policy/principle says that we want work bid out through a competitive process, we want a threshold, and we want an opportunity to bid on certain types of projects.

CHAIRMAN NOENNIG asked Alec Hansen how many and what types of projects are bid above \$4,000, and what the effect might be of changing the limit. **Alec Hansen** said that he did not have information on how many projects go out to bid between \$4,000 and \$25,000. He emphasized that the limit in this bill is only on gas tax, and that there are other contracting limits for other sources. He commented that one amendment in 48 years is just good sense. He said that he would check on the enactment data of the statute and the section. **CHAIRMAN NOENNIG** asked what kind of projects would be covered by this bill. **Alec Hansen** replied, "potholes." He said that only third class cities or towns can buy equipment under this statute with gas tax money. He said that projects would be very small construction-type projects.

CHAIRMAN NOENNIG asked if this limit would preclude contractors from doing that effectively, because all the projects are small. **Alec Hansen** said that larger cities and towns and counties cannot use gas tax money to buy equipment. He explained that the reason third-class cities and towns are allowed is because a former Speaker of the House lived in a town that owned a grader purchased from the WPA in 1931 that needed to be replaced.

Closing by Sponsor:

SEN. GEBHARDT said that most of the money gets spent on supplies for street and road maintenance. The smaller towns buy mix to repair potholes, the county buys gravel, culverts, or fencing

material, chips or a chip-seal job on a paved road. He stated that the \$25,000 amount is appropriate and it does not necessarily preclude contractors from doing work. He said that he does not think it is a matter of people not getting an opportunity to bid on doing the work. This just allows them to solicit bids rather than go through the formal process.

EXECUTIVE ACTION ON SB 33

{Tape: 1; Side: B; Approx. Time Counter: 7 - 18.3}

Motion: REP. RASER moved that SB 33 BE CONCURRED IN.

Discussion:

REP. CARNEY and REP. FORRESTER explained the bill.

Vote: Motion carried unanimously, 16-0. REPS.DEVLIN AND MAEDJE voted by proxy. REP. OLSON suggested putting the bill on the Consent Calendar and the Committee agreed.

EXECUTIVE ACTION ON SB 45

Motion: REP. HAWK moved that SB 45 BE CONCURRED IN.

Discussion:

REP. CARNEY explained the bill.

Vote: Motion carried unanimously, 16-0. REPS.DEVLIN AND MAEDJE voted by proxy. REP. OLSON suggested putting the bill on the Consent Calendar and the Committee agreed.

EXECUTIVE ACTION ON SB 47

{Tape: 1; Side: B; Approx. Time Counter: 10 - 18.3}

Motion: REP. OLSON moved that SB 47 BE CONCURRED IN.

Motion: REP. MORGAN moved that SB 47 BE AMENDED.

Discussion:

REP. MORGAN explained that she had a Conceptual Amendment to change the amount from \$4,000 to \$8,000.

REP. BECKER said that she had been going to propose \$15,000.

REP. HAWK said that \$25,000 isn't much money these days. He said that he did not see why an amendment was necessary.

REP. MENDENHALL said that he supported the amendment. He said that the contractor's testimony indicated that they feel this big of an increase is unreasonable. There are many small contractors that would like to get in on some fill-in work when they have slack time in their schedule, and others that might want to use this to get started.

REP. HAWK asked if there was any objection to having Cary Hegreberg speak on the amount of money that was needed. **CHAIRMAN NOENNIG** said there were no objections.

Cary Hegreberg gave an example of a contractor with a new company that does patching and small overlays who has invested money in equipment and is not well known. If a county or local government has a working relationship with an established company, they routinely go back and have that same firm do the work for them. This bill says they have to award the job to the lowest responsible bidder if it is over \$4,000. They want to amend to \$25,000. If the bill says they can award anything under \$25,000 without bidding; they could give it to the same company every time. The Contractor's Association wants other firms to have the opportunity to bid on small construction projects.

CHAIRMAN NOENNIG said that the range between \$8,000 and \$25,000 is substantial and that he did not feel the Committee had enough information to determine which was appropriate.

REP. RASER said that if the issue has not come up in 50 years, it is not a huge problem. She stated that if the Committee is going to raise the amount she would prefer using the lower figure or not at all.

Vote: Motion carried 11-5 with **REPS. CYR, LASLOVICH, BECKER, HAWK and NOENNIG** voting no, on a voice vote. **REPS.DEVLIN AND MAEDJE** voted by proxy

Motion/Vote: **REP. OLSON** moved that **SB 47 BE CONCURRED IN. Motion carried 15-1, REP. LASLOVICH** voting no. **REPS.DEVLIN AND MAEDJE** voted by proxy

REP. MORGAN will carry the bill on the floor.

ADJOURNMENT

Adjournment: 4:05 P.M.

REP. MARK NOENNIG, Chairman

LINDA KEIM, Secretary

EXHIBIT (loh47aad)